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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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FEDERAL COMMUNICATIONS COMMISSION
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In the matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

CC Docket No. 94-129

BELL ATLANTIC COMMENTS

Bell Atlantic¹ respectfully submits these comments on the Commission's proposed rules to implement the carrier selection provisions of the Telecommunications Act of 1996.²

Introduction and Summary

The Commission's proposal to strengthen its preferred carrier ("PC") change verification rules and extend them to subscriber changes of local exchange carriers is

¹ These comments are filed on behalf of the Bell Atlantic telephone companies which are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company. These comments are also filed on behalf of Bell Atlantic Communications, Inc. and NYNEX Long Distance Company.

² *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, CC Docket No. 94-129, FCC 97-248 (rel. July 15, 1997) ("FNPRM" or "Notice").

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certainly a step in the right direction.³ Slamming is already a black eye in the telecommunications industry and will certainly get worse as companies with notorious slamming practices enter additional markets. The Commission will need to devote more resources to enforce its rules and protect consumers from slamming.

Victims of slamming are usually incensed by their loss of control over their choice of telecommunications carrier. Forcing them to pay money to the very company that committed the illegal act will surely generate an avalanche of complaints. The Commission should instead give them the option of paying their authorized carrier once they receive a proper bill for the telecommunications services they received.

Victims of slamming are also eager to take whatever steps they can to prevent it from happening again. The Commission should not impose any obstacles for subscribers who wish to freeze their PC selection beyond the PC change verification procedures of the existing rules.

The Commission should also resist invitations to impose more onerous and discriminatory PC change verification requirements on incumbent local exchange carriers. Incumbent long distance carriers are the primary cause of the slamming problem. There is no reason why they should be given less stringent verification requirements than any other carriers.

³ The Commission's verification rules have historically applied only to landline interexchange services and should be extended only to landline local exchange services. As explained in the comments filed by Bell Atlantic Mobile, Inc., the Commission should not extend its verification rules to Commercial Mobile Radio Services at this time because slamming is not a problem with CMRS services.

I. THE COMMISSION SHOULD NOT REQUIRE VICTIMS OF SLAMMING TO PAY ANYTHING TO THE CARRIER RESPONSIBLE FOR THE SLAMMING

The Commission should not make slamming victims liable to the slamming carrier for any amount of money. As the Notice makes clear, victims of slamming feel they are “abused, cheated, and irreversibly exploited” by the slammer and are “incensed at the loss of control over their choice of telecommunications carriers.”⁴ Some even feel that slamming practices of certain long distance carriers are “‘fraudulent,’ ‘deceitful,’ ‘illegal,’ and ‘an invasion of privacy.’”⁵ Forcing these victims to pay money to the carrier that slammed them would be nothing short of rubbing salt in their wounds. It would inevitably generate further complaints to the Commission and to Congress.

The Commission should give subscribers the option of paying their authorized carrier (after it issues a bill for the subscriber’s calls at the authorized carrier’s rates), instead of paying the slamming carrier.⁶ By making clear that subscribers are liable for the telecommunications services they receive, but giving them the option of paying their authorized carrier, the Commission can reasonably protect carriers from subscribers who might game the system to get free telecommunications service and further reduce the financial incentive for slamming.

⁴ FNPRM at ¶ 8.

⁵ *Id.*

⁶ The authorized carrier, however, may not be able to issue an appropriate bill to the slamming victim. For example, the slamming carrier may not provide the authorized carrier with the billing detail records it needs to prepare an appropriate bill.

II. THE COMMISSION SHOULD FACILITATE SUBSCRIBER REQUESTS FOR PC FREEZES BY APPLYING ITS EXISTING VERIFICATION REQUIREMENTS

Bell Atlantic began offering PC freezes in response to its subscriber's demands for protection from slamming. When a PC freeze is imposed at the request of a subscriber, it is a reasonably effective protection against slamming.⁷ When it is imposed by a carrier without the subscriber's authorization, it is a threat to competition.

The Notice's proposal to apply the Commission's PC change verification procedures to PC freezes is a sound one. These rules are designed to carry out the subscriber's carrier selection wishes and are reasonably well suited to PC freezes. They will enable subscribers to obtain PC freeze protection with a minimum of effort and provide some protection against unscrupulous carriers that attempt to limit competition by imposing PC freezes without the subscriber's authorization.

Applying the Commission's PC change verification rules should not, however, entail a flat prohibition against including marketing information with PC freeze solicitations. The key is to ensure that the PC freeze authorization is separate or separable from the marketing materials in the solicitation. The Commission's existing verification rules already permit separable marketing materials to be presented to

⁷ No PC freeze that Bell Atlantic can impose is 100 percent effective against slamming. Some interexchange carriers have found ways to circumvent the freezes imposed by local exchange carriers. *See, e.g.*, Ameritech Comments in File No. CCB/CPD 97-19 at 16.

potential subscribers;⁸ there is no reason to deviate from this course for PC freeze verifications.

The Commission should not at this time attempt to define the factors it will consider in assessing the lawfulness of a particular PC freeze solicitation practice in a Section 208 complaint proceeding. The central focus of any such complaint proceeding will certainly be whether the subscribers voluntarily authorized their PC freezes on an informed basis. The individual factors that the Commission might consider should be developed after the Commission has the experience of factual records in several complaint proceedings, rather than in the current vacuum of this rulemaking.

Finally, the Commission should not require a subscriber's new local exchange carrier to establish automatically the same PC freeze the subscriber had with its prior local exchange carrier. There is no industry standard PC freeze today. Some local exchange carriers will not process PC changes from carriers on frozen accounts without talking directly to the subscriber, while others might require a written authorization or PIN from the subscriber. Requiring each local exchange carrier to honor every flavor of PC freeze that is currently available would be extremely burdensome, if not technically infeasible.

Moreover, in order to establish the same PC freeze the subscriber had with his or her prior carrier while completing a PC change, the new local exchange carrier would need to know what kind of PC freeze it is. The new carrier would therefore have to ask the prior carrier whether the subscriber has a PC freeze and, if so, what kind of a freeze it

⁸ *In the Matter of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560 (1995).

is. The processing of such requests will inevitably burden both new entrants and incumbents alike and will be an invitation to unscrupulous carriers to stop the loss of their subscriber or delay the PC change.

III. THERE IS NO REASON TO IMPOSE DIFFERENT REQUIREMENTS OR PROHIBITIONS ON INCUMBENT LOCAL EXCHANGE CARRIERS

There is no reason to impose more onerous verification requirements on local exchange carriers than long distance carriers. The several concerns identified in the Notice about theoretical advantages that incumbents might have with respect to PC changes are already addressed by existing statutory requirements or Commission rules. They do not warrant any further requirements or prohibitions.

First, the FNPRM speculates that “the incumbent LEC could potentially delay or refuse to process PC change requests from local exchange service competitors” to avoid losing local customers.⁹ This concern is already addressed by Section 251’s non-discrimination requirements. The Commission has already found that incumbent local exchange carriers must “provision[] resale orders within the same average installation interval as that achieved by its retail operations.”¹⁰

Second, the Notice suggests that “an incumbent LEC may send to its subscriber who has chosen a new LEC a promotional letter in an attempt to change the subscriber’s

⁹ FNPRM ¶ 15.

¹⁰ *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, CC Docket No. 97-137, FCC 97-298, ¶ 166 (rel. Aug. 19, 1997).

decision to switch to another carrier.”¹¹ Where the promotional materials are clearly separate or separable from any letter of authorization, this type activity is neither anti-competitive nor anti-consumer. Long distance carriers have engaged in these “winback” activities since the inception of equal access and the Commission has not prohibited them. In the local market, both new entrants and incumbents will have an equal ability to engage in such “winback” activities because Section 251’s non-discrimination provisions require that new entrants receive notice of their customer losses in the same time frame as the incumbent’s retail marketing personnel. Accordingly, to deny local exchange carriers the same opportunities as interexchange carriers would be both unfair and discriminatory.

The Notice also questions whether LECs serving as both submitting and executing carriers for changes in telecommunications service have an enhanced ability or incentive to make unauthorized PC changes on their own behalf without detection. The answer is absolutely not. First, any PC change, by a LEC or any other carrier, will cause a change in the bills received by the subscriber. The sheer volume of slamming complaints filed with the Commission is compelling evidence that subscribers scrutinize their telecommunications bills and are able to detect unauthorized changes. In addition, any PC change by a LEC will generate notice to the former carrier that it has lost the customer. These carriers can contact their former customers to verify the LEC’s PC change. It is therefore inconceivable that a LEC’s unauthorized PC change would be any less detectable than any other carrier’s unauthorized PC change.

¹¹ FNPRM ¶ 15.

Moreover, the premise of the Notice's question – that only a LEC can be both a submitting and executing carrier for a PC change – is simply false. Any facilities-based interexchange carrier that permits resale of its services can be both a submitting carrier and an executing carrier. If a reseller is serving a long distance customer by reselling a facilities based carrier's interexchange services, the facilities based interexchange carrier could slam that customer by retaining the call detail records that it would ordinarily send to the reseller and using them to bill the customer itself. In this case, the facilities based interexchange carrier would have both submitted and executed the unauthorized PC change. There is therefore no basis for limiting LECs to verification by an independent, third party.¹²

IV. THE COMMISSION'S RULES SHOULD IDENTIFY ONLY ONE SUBMITTING CARRIER AND ONE EXECUTING CARRIER FOR EACH PC CHANGE TRANSACTION

In the typical PC change transaction, there will be only two carriers involved. The submitting carrier will be the one that initiates a PC change at the request of a subscriber.¹³ The executing carrier will be the one that receives the PC change request from the submitting carrier and causes it to be implemented.

¹² While the Commission has the authority to investigate and prosecute wrongdoing and malfeasance on the part of carriers executing PC changes, the FNPRM does not include any evidence that such wrongdoing or malfeasance is now occurring. Nor is Bell Atlantic aware of any complaints before the Commission alleging that Bell Atlantic committed malfeasance or wrongdoing in processing PC changes. Mandating the use of a third party to execute PC changes is a solution in search of a problem.

¹³ The Commission should further clarify that a "submitting carrier" might not actually "submit" anything to implement a PC change request. This will likely be the case where a single carrier both initiates and implements a PC change request.

There are, however, PC change transactions that involve more than two carriers. For example, a long distance carrier may submit a PC change request to a local service reseller that, in turn, directs its underlying facilities-based carrier to change the PC on the reseller's customer's line. There is more than one reason why it makes sense in this situation to define only the long distance carrier as the submitting carrier and only the reseller as the executing carrier.

First, the long distance carrier should be able to negotiate liability directly with the reseller as the executing carrier, not a facilities-based carrier that may be a complete stranger to the long distance carrier. If the long distance carrier submits a properly verified PC change request to the reseller and that request is not properly implemented, the long distance carrier should be able to hold the reseller accountable under appropriate circumstances. The reseller should not be able to bring a third carrier into its dispute with the long distance carrier by pointing a finger at the underlying facilities-based carrier. If the reseller believes the facilities-based carrier was responsible for the error, the reseller should separately seek any appropriate indemnification under its resale agreement with the facilities-based carrier.

Second, the subscriber will likely contact the reseller to complain about being slammed. The reseller will then request that the submitting long distance carrier document its compliance with the Commission's verification rules. If there is any question about the authenticity of the documentation, the reseller will likely contact its subscriber. It is therefore the reseller – not the underlying facilities-based carrier – that is in the best position to negotiate any dispute regarding the submitting carrier's liability for slamming the subscriber.

V. THE COMMISSION SHOULD PERMIT, BUT NOT REQUIRE, EXECUTING CARRIERS TO USE SEPARATE OR ADDITIONAL VERIFICATION PROCEDURES

The Commission correctly concluded that executing carriers should not be required to duplicate the PC change verification efforts of submitting carriers. Such duplication would be costly and unlikely to reduce slamming. The Commission should, however, permit executing carriers to implement separate or additional verification procedures on a nondiscriminatory basis.

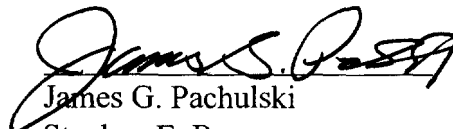
Conclusion

The Commission should move quickly to strengthen its PC change verification rules and extend them to changes in local exchange carriers. Such action is necessary to prevent an increase in slamming complaints as unscrupulous long distance carriers attempt to enter the local market by submitting unauthorized PC change requests.

Respectfully submitted,

The Bell Atlantic telephone companies
Bell Atlantic Communications, Inc.
NYNEX Long Distance Company

By their Attorneys



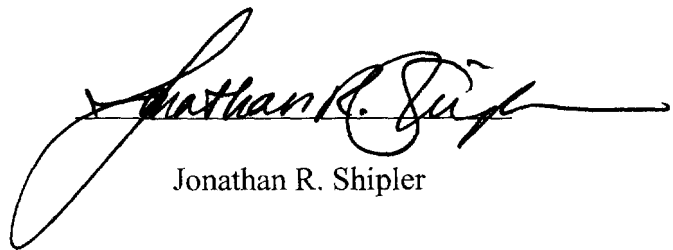
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Date: September 15, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 1997, a copy of the foregoing "Bell Atlantic Comments" was served by first class U.S. mail, postage prepaid, on the parties listed on the attached service list.

A handwritten signature in black ink, appearing to read "Jonathan R. Shipler", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

Jonathan R. Shipler

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